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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of

USAGE OF THE PUBLIC SWITCHED
NETWORK BY INFORMATION
SERVICE AND INTERNET ACCESS
PROVIDERS

CC Docket No. 96-263

COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. INTRODUCTION	2
II. ARGUMENT	5
A. Retention Of The Decade-Old "Temporary" ESP Exemption Can No Longer Be Justified On Public Policy Grounds	5
B. The Proliferation Of Voice-Over-The-Net Services Requires Prompt Elimination of the ESP Exemption	14
III. CONCLUSION	19

SUMMARY

The Telecommunications Resellers Association ("TRA"), a national trade association representing more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, herein urges the Commission to eliminate the "ESP exemption." The ESP exemption undoubtedly constituted sound public policy when it was first adopted in the early 1980's. Given the explosive growth and resultant maturation of the enhanced services industry over the last decade, however, preferential access charge treatment of enhanced service providers and Internet access providers can no longer be justified. The ESP exemption provides ESPs and IAPs with a significant cost advantage derived solely from a regulatory quirk. In light of the convergence of local and long distance and basic and enhanced telecommunications offerings, that gratuitous cost advantage has now been transformed into an unwarranted competitive advantage injurious to other providers of interstate, interexchange telecommunications services.

The Commission has undertaken the herculean task of, and is currently deeply involved in, reforming its existing access charge regime. Actions taken by the Commission to this end will lessen the burden of interstate access charges on all providers of interstate, interexchange telecommunications services. Certainly, there can be no legitimate reason for continuing to exempt ESPs and IAPs from payment of interstate access charges following such reformation. It, accordingly, is time for ESPs and IAPs to join resale carriers and other entities that once benefited from interstate access charge exemptions in stepping up to like obligations to pay interstate switched access charges to originate and terminate interstate, interexchange telecommunications services traffic.

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The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 and 1.430 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.430, hereby submits its comments in response to the Notice of Inquiry, FCC 96-488, released by the Commission in the captioned docket on December 24, 1996 (the "NOI"). In the NOI, the Commission, having tentatively concluded in its associated Notice of Proposed Rulemaking, FCC 96-488, released December 24, 1996 (the "NPRM"), that "information service providers should not be subject to interstate access charges as currently constituted,"¹ seeks to explore "fundamental issues about the implications of usage of the public switched network by information service and Internet access providers."² In its Comments here, TRA will argue that while access charge exemptions may once have been justified, equity -- competitive and otherwise -- now demands that following the near-term reformation by the Commission of its

¹ NPRM, FCC 96-488 at ¶¶ 282 - 290, 311.

² NOI, FCC 96-488 at ¶ 20.

existing access charge regime, interstate access charges should be assessed equally on all users of the public switched network, including enhanced service providers ("ESPs") and Internet access providers ("IAPs").

I.

INTRODUCTION

A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling, among other services, international, wireless, enhanced and internet services. TRA's resale carrier members are also among the many new market entrants that are, or will soon be, offering local exchange telecommunications services.

TRA's resale carrier members serve generally small to mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to rates generally available only to much larger consumers of telecommunications products and services. TRA's resale carrier members also offer small to mid-sized commercial customers enhanced, value-added products and services, including a variety of sophisticated billing options, as well as personalized customer support functions, that are generally reserved for large-volume corporate

users. And TRA's resale carrier members are at the forefront of industry efforts to diversify and expand service and product offerings, endeavoring in so doing to satisfy in a convenient and cost-effective manner all of the telecommunications needs of both residential and small and mid-sized commercial consumers.

Not yet a decade old, TRA's resale carrier members -- the bulk of whom are small to mid-sized, albeit high-growth, companies³ -- nonetheless collectively serve millions of residential and commercial customers and generate annual revenues in the billions of dollars.⁴ The emergence and dramatic growth of the resale industry over the past five to ten years has produced thousands of new jobs and myriad new commercial opportunities. In addition, TRA's resale carrier members have facilitated the growth and development of second- and third-tier facilities-based interexchange carriers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small

³ The average TRA resale carrier member has been in business for five years, serves 10,000 customers, generates annual revenues of \$10 million and employs in the neighborhood of 50 people. Among TRA's resale carrier members, roughly 30 percent have been in business for less than three years and over 80 percent were founded within the last decade. And while the growth of TRA's resale carrier members has been remarkable, the large majority of these entities remain relatively small. Nearly 25 percent of TRA's resale carrier members generate revenues of \$5 million or less a year and less than 20 percent have reached the \$50 million threshold. Seventy-five percent of TRA's resale carrier members employ less than 100 people and nearly 50 percent have work forces of 25 or less. Nonetheless, more than a third of TRA's resale carrier members provide service to 25,000 or more customers.

⁴ TRA's resale carriers are well represented among the ten, and constitute more than half of the twenty, largest interexchange carriers in the Nation.

business community, TRA's resale carrier members have helped other small and mid-sized companies expand their businesses and generate new employment opportunities.⁵

TRA's interest in this proceeding is in ensuring equal competitive opportunities for all providers of interstate, interexchange telecommunications services. In TRA's view, regulation should not afford any provider or class of providers with a significant cost or other competitive advantage over other providers without clear and compelling justification. Preferential treatment of one group of competitors over all others interferes with the operation of market forces, creating potentially significant marketplace distortions.

Consistent with this view, TRA, in earlier-filed comments advocating decisive access charge reform, including prompt and dramatic reduction of interstate access charges to the economic cost of traffic origination/termination, urged the Commission to eliminate the "ESP exemption." The ESP exemption undoubtedly constituted sound public policy when it was first adopted in the early 1980's. Given the explosive growth and resultant maturation of the enhanced services industry over the last decade, however, preferential access charge treatment of ESPs and IAPs can no longer be justified. The ESP exemption provides ESPs and IAPs with a significant cost advantage attributable solely to regulatory fiat. In light of the convergence of local and long distance and basic and enhanced telecommunications offerings, that gratuitous cost advantage has

⁵ President Clinton could have been referring to TRA's resale carrier members when he noted in The State of Small Business: A Report of the President 1994 (at page 7), "a great deal of our Nation's economic activity comes from the record number of entrepreneurs living the American Dream. . . . I firmly believe that we need to keep looking to our citizens and small businesses for innovative solutions. They have shown they have the ingenuity and creative power to make our economy grow; we just need to let them do it."

now been transformed into an unwarranted competitive advantage injurious to other providers of interstate, interexchange telecommunications services.

The Commission has undertaken the herculean task of, and is currently deeply involved in, reforming its existing access charge regime. Actions taken by the Commission to this end will lessen the burden of interstate access charges on all providers of interstate, interexchange telecommunications services. Certainly, there can be no legitimate reason for continuing to exempt ESPs and IAPs from payment of interstate access charges following such reformation. It, accordingly, is time for ESPs and IAPs to join resale carriers and other entities that once benefited from interstate access charge exemptions in stepping up to like obligations to pay interstate switched access charges to originate and terminate interstate, interexchange telecommunications services traffic.

II.

ARGUMENT

A. Retention Of The Decade-Old 'Temporary' ESP Exemption Can No Longer Be Justified On Public Policy Grounds

The ESP exemption had its genesis in 1983 when the Commission adopted a comprehensive plan for the recovery by local exchange carriers ("LECs") of the costs associated with the origination and termination of interstate, interexchange traffic.⁶ The access charge plan

⁶ MTS and WATS Market Structure, 93 FCC 2d 241 (1983), *modified on recon.* 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1984), *aff'd in principal part and remanded in part*, National Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *cert denied*, 469 U.S. 1227 (1985), *modified on further recon.*, 99 FCC 2d 708 (1984), *aff'd sub nom.*, American Tel. & Tel. Co. v. FCC, 832 F.2d 1285 (D.C. Cir. 1987), *aff'd on further recon.*, 101 FCC 2d 1222 (1985), *recon. denied*, 102 FCC 2d 849 (1985).

so adopted by the Commission was "designed in part to reduce or eliminate discrimination or preferences in charges for telecommunications services."⁷ As explained by the Commission:

In the access charge proceeding, the first of our four primary goals was the "elimination of unreasonable discrimination and undue preferences among rates for interstate services." Specifically, our objective has been to distribute the costs of exchange access in a fair and reasonable manner among all users of exchange access service, irrespective of their designation as carriers, non-carrier service providers, or private customers. We noted in 1983 that although many entities used exchange access service, some were paying high carrier usage charges, while others were paying local business rates. We endeavored to establish a more equitable sharing of costs . . .⁸

Cognizant that "[i]nterstate enhanced services often use common lines and local exchange switches in the same manner as MTS and some MTS equivalent services," the Commission "initially intended to impose interstate access charges on enhanced service providers for their use of local exchange facilities to originate and terminate their interstate offerings . . . [reasoning] that equity and efficiency require that those enhanced service providers pay the same charges for exchange access."⁹ On reconsideration, however, the Commission "recognized that the immediate imposition of interstate access charges on all users of exchange access would have some undesirable consequences."¹⁰ The Commission, for example, feared that the dramatic cost increases occasioned by the immediate imposition of interstate access charges on entities

⁷ Amendment of Part 69 of the Commission's Rules Relating to Private Networks and Private Line Users of the Local Exchange (Notice of Proposed Rulemaking), 2 FCC Rcd. 7441, ¶ 1 (1987).

⁸ Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers (Notice of Proposed Rulemaking), 2 FCC Rcd. 4305, ¶ 2 (1987) (footnotes omitted).

⁹ Id. (footnotes omitted).

¹⁰ Id. at ¶ 3.

accustomed to paying local business rates for their interstate access might "undermine their ability to continue to provide service while they were adjusting their operations in response to the new access charge rules."¹¹ Accordingly, the Commission fashioned a transition plan which exempted not only ESPs, but resale carriers, from paying interstate access charges, thereby avoiding what came to be known as "rate shock."

The Commission subsequently eliminated the exemption from interstate access charges afforded resale carriers.¹² In so doing, the Commission declared that while concerns regarding rate shock justified a temporary exemption, they did not warrant a permanent exemption.¹³ The Commission explained that its goal was to promote competition, not to protect competitors, and that elimination of the access charge exemption for resale carriers would produce a more economically rational and equitable pricing structure.¹⁴

Having imposed interstate access charges on all common carrier telecommunications services, the Commission shortly thereafter proposed to eliminate the exemption from interstate access charges enjoyed by ESPs.¹⁵ In so doing, the Commission expressed its concern that "charges currently paid by enhanced service providers do not contribute sufficiently to the costs of the exchange access facilities they use in offering their services to the

¹¹ Id. (footnotes omitted).

¹² WATS-Related and Other Amendments of Part 69 of the Commission's Rules, CC Docket No. 86-1, FCC 86-115, ¶¶ 26 - 27 (released March 21, 1986), FCC 86-377, ¶ 11 (released August 26, 1986).

¹³ Id.

¹⁴ Id.

¹⁵ Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers (Notice of Proposed Rulemaking), 2 FCC Rcd. at ¶ 1.

public."¹⁶ Noting that "[ESPs], like facilities-based interexchange carriers and resellers, use the local network to provide interstate services," the Commission reasoned, "[t]o the extent that [ESPs] are exempt from access charges, the other users of exchange access pay a disproportionate share of the costs of the local exchange that access charges are designed to cover."¹⁷

Moreover, the Commission stated that "concerns with 'rate shock' cannot sustain an uneconomic pricing structure in perpetuity."¹⁸ Initially, the Commission emphasized that ESPs had had "ample notice of [its] ultimate intent to apply interstate access charges to their operations and ample opportunity to adjust their planning accordingly."¹⁹ And the Commission continued, given ongoing declines in carrier common line charges ("CCLs"), "the financial impact on [ESPs] from the imposition of interstate access charges will be substantially smaller than it would have been at the time of the implementation of the access charge plan and will decrease in the immediate future."²⁰

Under intense political pressure from the enhanced services community, the Commission ultimately elected to retain the ESP exemption in 1988.²¹ The Commission emphasized that "as a result of a number of complex and interrelated factors, the enhanced

¹⁶ Id. at ¶ 7.

¹⁷ Id.

¹⁸ Id. at ¶ 8 (footnote omitted).

¹⁹ Id.

²⁰ Id. at ¶ 9.

²¹ Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631 (1988).

services industry is entering a unique period of rapid and substantial change."²² "[G]iven the combined effects of the impending [Open Network Architecture] implementation and the entry of the [Bell Operating Companies] into certain aspects of information service," the Commission explained, "the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired."²³ Nonetheless, the Commission remarked that access charges would be "decreasing as a result of a number of factors, including the further implementation of subscriber line charges."²⁴

Three years later, the Commission again reexamined the rationale underlying the ESP exemption.²⁵ Among its stated goals in so doing, the Commission stressed the need to balance its "desire to foster development of the enhanced service industry with a concern that any special treatment of ESPs not unduly burden other interstate ratepayers."²⁶ The Commission took note of ESP claims that even though ESPs "do not contribute to the interstate share of local exchange NTS costs to the same extent that customers of other interstate services do," enhanced services are not being subsidized, only avoiding payment of the subsidies embedded in interstate switched access charges.²⁷ The Commission countered that "other interstate users of the local

²² Id. at ¶ 1.

²³ Id. at ¶ 17.

²⁴ Id. at ¶ 17, fn. 48.

²⁵ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture (Notice of Proposed Rulemaking), 4 FCC Rcd. 3983 (1989).

²⁶ Id. at ¶ 32.

²⁷ Id. at ¶ 34.

exchange may face higher charges than they would in the absence of an access charge exemption for enhanced services traffic."²⁸

Once again, the Commission elected to retain the ESP exemption. As before, the Commission emphasized the "dynamic transitional period" in which the enhanced services industry found itself. As the Commission explained, "[r]eplacing the current exemption with either of the federal alternatives described in the Notice would disrupt the enhanced services industry during a time of rapid transition, without yielding concomitant benefits."²⁹

It is now thirteen years after the Commission first afforded ESPs a "temporary" exemption from interstate switched access charges to avoid unduly burdening the then "fledgling" enhanced services industry and disrupting the provision of information services to the public. As the Commission has repeatedly made clear, the original access charge exemptions were not intended to be permanent and, as noted above, most of these exemptions, including the exemption once enjoyed by resale carriers, have already been eliminated.³⁰ Certainly, the original rationale for the ESP exemption -- *i.e.*, avoidance of rate shock -- vanished long ago. As noted above, the Commission has acknowledged that "concerns with 'rate shock' cannot sustain an uneconomic pricing structure in perpetuity."³¹ And ESPs cannot seriously argue that they have not had adequate notice of the Commission's intent to ultimately extend interstate access charges to them

²⁸ Id.

²⁹ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd. 4524, ¶¶ 60 - 65 (1991).

³⁰ Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631 at ¶ 2.

³¹ Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers (Notice of Proposed Rulemaking), 2 FCC Rcd. at ¶ 8 (footnote omitted).

and ample opportunity to adjust their business and operations accordingly. Indeed, the Commission has proposed off and on for ten years to terminate the ESP exemption.

Moreover, the enhanced services industry is no longer a "fledgling" industry struggling to survive. Indeed, under virtually any comparative standard, the long distance resale community would be far more deserving of an exemption than the enhanced services industry. After all, the long distance resale industry is younger, is experiencing less explosive growth and is generally populated by fewer mega-corporations. Yet, resale carriers lost their access charge exemption nearly ten years ago when it was legitimately a "fledgling" industry.

The enhanced services industry now generates tens of billions of revenue dollars annually, continues to experience double (and sometimes triple) digit annual growth, and is populated by industry giants. AT&T sizes what it characterizes as a "robust, competitive and diverse" enhanced services market at \$17.5 billion in 1995.³² Moreover, AT&T notes that "enhanced services in the United States have grown year over year at explosive rates, and are projected to continue to grow at dramatic rates over the next five years."³³

AT&T estimates that Internet service revenues in the U.S. grew 130 percent from 1994 to 1995 (Source: IDG/INPUT, Inc.), and are expected to grow at a cumulative average growth rate ("CAGR") of 100 percent from 1995 through 2000. (Source: Morgan Stanley, Inc.) The U.S. consumer on-line services revenues have experienced similar dramatic growth rates, increasing by 64 percent from 1994 to 1995, and are expected to grow at a CAGR of 35 percent from 1995 to 2000. (Source: SIMBA Information, Inc.) Electronic commerce, which includes electronic messaging services, realized a 39 percent growth rate in the U.S. from 1994 to 1995, with anticipated overall U.S. growth rate of 22

³² Comments of AT&T Corp. filed in CC Docket No. 96-61 on April 25, 1996 at p. 29, fn. 35.

³³ Id. at p. 29.

percent from 1995 through 2000. (Source: AT&T EasyCommercesm Services).³⁴

As to the continuing dramatic changes brought about by legislation, regulation and technological advancements, the enhanced services industry is not being uniquely impacted; indeed, the entire telecommunications industry is being buffeted by the winds of change on a seemingly daily basis. Long distance carriers are facing new competition in the interexchange telecommunications service market from the Bell Operating Companies ("BOCs") and other large incumbent LECs. Incumbent LECs are confronting entry by IXC's, cable television ("CATV") system operators and other major service providers into the local telecommunications service market. Domestic providers are facing market entry by large international carriers. And all of these market changes are accompanied by dramatic regulatory changes, impacting virtually every aspect of the provision of local exchange, exchange access, intraLATA, intrastate and interstate toll and international service.

Finally, access charges are substantially lower now than they were when first adopted in 1983. In May of 1984, the CCL for both originating and terminating access was \$0.0524 per minute. Over the past decade, access charges have been pushed steadily downward as the subscriber line charge ("SLC") has been increased. And given that access charges nonetheless remain at levels well in excess of the costs associated with the origination and termination of interstate, interexchange traffic, access charge reform will certainly produce greater reductions in interstate access charges, hopefully in the near term.

³⁴ Id. at p. 29, fn. 36.

In short, there no longer exists a compelling basis for providing ESPs and IAPs with preferential access treatment; indeed, no such basis has existed for some time. It is not surprising that the ESPs and IAPs have grown accustomed to not paying interstate access charges and have structured their businesses and their services offerings around the ESP exemption. But such "head-in-the-sand" behavior does not justify retention of an exemption which is no longer warranted (and as will be discussed in the subsequent section of these Comments, is actually inflicting competitive damage).

Absent a countervailing good, TRA urges the Commission to return to the fundamental precepts of its access charge regime in assessing interstate access charges. As noted above, the first of the Commission's four primary goals in structuring its access charge system was the "elimination of unreasonable discrimination and undue preferences among rates for interstate services."³⁵ ESPs and IAPs have enjoyed a preference not enjoyed by providers of common carrier telecommunications services for a decade. TRA submits that the Commission should, as it has acknowledged, promote competition, not competitors.³⁶ As the Commission long ago recognized, "equity and efficiency require that . . . [ESPs] pay the same charges for exchange access [as all other users of such service]."³⁷

It matters little that ESPs and IAPs may actually be recovering the costs of their access facilities; even if this is the case, they are nonetheless being provided preferential access

³⁵ Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers (Notice of Proposed Rulemaking), 2 FCC Rcd. 4305 at ¶ 2.

³⁶ WATS-Related and Other Amendments of Part 69 of the Commission's Rules, CC Docket No. 86-1, FCC 86-377 at ¶ 11.

³⁷ Id.

charge treatment. Requiring one group of users to merely cover the costs of their access facilities while requiring all other users to pay substantially more to originate and terminate interstate, interexchange traffic is discriminatory. So long as interstate access charges are set at grossly inflated levels, equity demands that all users pay the inflated charges. The solution is to remove the subsidies and excessive costs from access charges, not to prefer one group of users over all others. And this is precisely what the Commission has undertaken to do in reforming its access charge regime.

Accordingly, TRA does not disagree with the NOI that assessment of "interstate access charges as currently constituted" on ESPs and IAPs would not constitute sound public policy. But then again, it is not sound public policy to continue to assess grossly inflated interstate access charges on common carrier providers of telecommunications services. As discussed in the following section of these comments, the Commission no longer has the luxury of doing nothing. Ideally, interstate access charges should be reduced to the economic cost of originating and terminating interstate, interexchange traffic and thereafter extended to ESPs and IAPs. If, however, dramatic reductions in interstate access charges are not to be forthcoming in the near future, competitive equity demands that the ESPs and IAPs must nonetheless be brought into the access charge system.

B. **The Proliferation Of Voice-Over-The-Net Services**
Requires Prompt Elimination of the ESP Exemption

Over the past decade, the damage occasioned by the ESP exemption has generally been limited to a subsidization of ESPs and IAPs by those entities which have had to pay somewhat higher interstate access charges because ESPs and IAPs were allowed to pay business

line rates in lieu of interstate access charges.³⁸ The emergence of Internet-based telephone services -- commonly known as Voice-Over-The-Net ("VON") services -- however, has raised the stakes substantially. VON services are directly competitive with traditional voice telephony. They are less expensive solely by virtue of a regulatory quirk in the form of the ESP exemption, not because of any technological advances or business acumen. Accordingly, as VON services proliferate, the ESP exemption will no longer simply provide ESPs and IAPs with a substantial price break, it will cause increasingly serious market distortions.

Artificially regulatory distinctions among telecommunications services are breaking down. The same entities are now, or will soon be, providing local and long distance services and are integrating with those services enhanced and wireless service offerings. More and more, the cliché "a minute is a minute" is becoming reality. In such an environment, assessing different rates and charges on different users or groups of users that are not driven by differences in costs

³⁸ To the extent that value added network ("VAN") operators provide services comparable to those provided by common carriers, competitive damage has been inflicted as well. After all, VAN service providers largely provide transmission services. Based on the Commission's "contamination theory," their however, entire offering is treated as "enhanced."

Under the contamination theory, VANs that offer enhanced protocol processing services in conjunction with basic transmission services have historically been treated as unregulated enhanced service providers. Under this theory, the enhanced component of their offerings is viewed as 'contaminating' the basic component, and as a result, the entire offering is considered enhanced.

Independent Data Communications Manufacturers Association, Inc.: Petition for Declaratory Ruling that AT&T's InterSpan Frame Relay Service is a Basic Service, 10 FCC Rcd. 13717, ¶ 18 (1995).

Moreover, ESPs, because they do not pay interstate access charges, also have an unfair advantage over IXCs when they carry email, fax and video applications for the mass market of small and mid-sized customers. While large IXCs are increasingly taking advantage of the ESP exemption via their own VANs, smaller IXCs often lack the same flexibility.

occasioned by those different users or groups of users can no longer be tolerated. As the Commission has elsewhere remarked:

Where costs differ, rate differences that accurately reflect those differences are not discriminatory. . . . On the other hand, price differences based not on cost differences but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other factors not reflecting costs, the requirements of the Act, or applicable rules, would be discriminatory . . .³⁹

VON services make use of loop, switching and other network facilities comparable to that made by traditional voice telephony. Both services, accordingly should be assessed like rates and charges. To the extent that different rates and charges are imposed, market place distortions are created. And these distortions may well increase dramatically over the next few years if not promptly addressed by the Commission.

VON services are a relatively new phenomenon. When first introduced, they were limited to computer-to-computer calling and were, charitably speaking, technologically rudimentary, being plagued by inferior sound quality, as well as an inability to provide fully-duplexed conversation. Remarkable technological advances over the past 12 to 18 months, however, now permit calls to be placed from one telephone to another using VON services. Sound quality has improved dramatically and full duplex operation has been realized. Some of these advanced services were described as follows in a recent trade publication:

Unlike Internet phones for home PC users, these voice-over-IP services enable telephone-to-telephone communications over the

³⁹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶¶ 860 - 61 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon. pending* ("Local Competition First Report and Order").

Internet. Four companies offer or have announced plans to offer this type of service: IDT Corp. (Hackensack, NJ), Global Exchange Company, Inc. (Abingdon, VA), Vienna Systems, LTD. (Kanata, ON), and AlphaNet Telecom, Inc. (Toronto, ON). IDT offers two services. The Net2Phone service allows PCs to call other PCs or telephones. . . . The Net2Phone Direct Service, launched in January 1997, dispenses with the need for a PC entirely and allows telephone-to-telephone communication via the Internet. Callers dial a local or toll-free access number, which connects the call to IDT's inbound switch server in New Jersey. The server switches the call from the public circuit-switched network to the Internet's packet switched network, digitizing and packetizing voice along the way. . . . GXC currently offers service to all area codes in the U.S. and began service to international locations in late September 1996. . . . Vienna.way consists of server software that runs on a UNIX or Windows NT Intel Corp.-based PC, client software, DSP (digital-signal processing) cards, and PSTN interface cards supporting ISDN BRI (Basic Rate Interface), PRI (Primary Rate Interface), or T1 telecommunications links. The server software establishes and manages all calls, providing telephony features such as call hold and call forwarding, and switches traffic between IP networks and, through its gateway module, between an IP network and the public telephone network. End users interact with the Vienna.way server either through a traditional telephone or through client software installed on a PC. . . . AlphaNet will introduce an IP-based international voice service early in 1997 that also relies on Sprints GlobalOne international data service. . . .⁴⁰

According to International Data Corp. ("IDC"), a Farmington, Massachusetts-based market research firm, more than half a million people currently use VON services.⁴¹ IDC projects that this number will increase dramatically by the end of the century, with estimates ranging from 16 million to 63 million Internet telephony users.⁴² And this demand will be driven

⁴⁰ Muller, Nathan J., "Internet Telephony: Here to Stay," Telecom Perspectives (Jan. 1997).

⁴¹ "Internet Telephony: Almost Ready for Prime Time," Communications News, Vol 34, No. 1, pg. 50 (Jan. 1997).

⁴² Id.

primarily by the prospect of inexpensive calling. As described by one commentator, "Internet telephony software makes it possible for users to engage in long distance conversation between virtually any locations in the world without regard for per minute usage charges."⁴³ Another article trumpets. "[c]all anywhere, talk forever, and never pay long-distance charges."⁴⁴

The problem is that the price differential between traditional circuit-switched voice telephony and Internet-based telephony is an artificial one derived from preexisting regulatory distinctions which long ago outgrew their usefulness. This artificial price differential must be remedied if competition in the interstate, interexchange market is to remain fair. All users of the public switched network should pay like charges to originate and terminate traffic. All providers of voice telephony should contribute to universal service and other regulatory funds. No group should be subsidized by or provided a competitive advantage over other groups, absent compelling justification. Once the playing field has been leveled, then let competitive forces take over.

⁴³ Id.

⁴⁴ Muller, Nathan J., "Internet Telephony: Here to Stay," Telecom Perspectives (Jan. 1997).


III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt policies in this docket consistent with these Comments.

Respectfully submitted,

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